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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.   | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------|------------------|
| 10/552,655   | 10/11/2005  | Felix Flachsmann     | 102790-128 (30044 US) | 2738             |
| 27389      7590      07/11/2011  |             |                      |                       |                  |
| PARFOMAK, ANDREW N.<br>NORRIS MCLAUGHLIN & MARCUS PA<br>875 THIRD AVE, 8TH FLOOR<br>NEW YORK, NY 10022 |             |                      |                       |                  |
| EXAMINER   |             |                      |                       |                  |
| GRESO, AARON J   |             |                      |                       |                  |
| ART UNIT   |             | PAPER NUMBER         |                       |                  |
| 1726   |             |                      |                       |                  |
| MAIL DATE  |             | DELIVERY MODE        |                       |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

|                                      |  |
|--------------------------------------|--|
| <b>Application No.</b><br>10/552,655 | <b>Applicant(s)</b><br>FLACHSMANN ET AL. |
| <b>Examiner</b><br>AARON GRESO       | <b>Art Unit</b><br>1726                  |

**—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —**

THE REPLY FILED 28 June 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: Proposed Amendment adds new Claim 20. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. (See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 3,5,8,10,11,13,15,18 and 19

Claim(s) withdrawn from consideration: None.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/Patrick Joseph Ryan/  
Supervisory Patent Examiner, Art Unit 1726

/Aaron J. Greso/

Continuation of 11. does NOT place the application in condition for allowance because newly added Claim 20 genus requires R1 to be the same as R2; this further limitation not being required in previous Claims. As such, arguments directed towards Claim 20 are not addressed.

In regard to the previously submitted Claims 3, 5, 8, 10-11, 13, 15, 18-19: Applicant Argues:

That Karr Hunt does not suggest the method of manufacturing a fragrance application because Karr Hunt discloses agents for deterioration of cellulosic substances (page 10 of 23 1<sup>st</sup> full paragraph) and is therefore nonanalogous while the rejection employs hindsight (pages 11-12 of 23).

In response, the materials disclosed by Karr Hunt are applicable to the genus materials Claimed. They inherently comprise the same material properties as those claimed. They are employed for an application that would also inherently employ their inherent properties.

Applicant argues (page 13-15 of 23):

That Finch is not combinable with Karr Hunt because Karr Hunt teaches employing materials for retarding cellulose decomposition while the fabric treatment compositions taught by Finch employ a fabric builder that is not a perfume.

In response to Applicant's argument that Finch and Karr Hunt are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the fabric deposition method of Finch applies to a builder; the builder is not indicated to be a cellulose decomposition retarding agent. When cellulose, taken as a fabric material (e.g., cotton) is treated with a cellulose decomposition retarding material that is fragrant, the combining of the the two references is taken as being comparable in application and materials.

Applicant argues (page 15 of 23) that Finch does not teach employing carbamates and that Karr Hunt does not teach that carbamates have fragrance properties.

In response, as Finch teaches that fragrance material is to be placed on fabric materials for as long as possible, and as Karr Hunt teaches preservation of fabric material substances, the motivation to combine is presented when preserving the fabrics that are to receive perfume materials for as long as possible.

Applicant further argues (page 16 of 23):

That picking and choosing is employed with hindsight.

In response to applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Picking a larger molecule that is to stay placed longer, as indicated by Finch, would be expected to apply to a higher molecular weight material when employed for prolonging the material by retarding deterioration of fabric material; a tertiary amine with a non-hydrogen R group would be expected to have a higher molecular weight than a secondary amine.

Applicant argues regarding 35 USC 103(a) rejections over Torii and Kaiser (pages 16-19)

A) That Torii et al does not disclose materials as fragrances because a reference that discloses a material that does not have an unpleasant odor does not make the material fragrant.

B) That Torii et al does not disclose a material in the genus of Formula (I) (Claim 3)  
In response, when the material taught for the genus of Torii et al. formula (II), comprises R1, R2 and R3 all being propyl groups, the material reads on the Claim.

In response, fragrances are employed by Torrelli (col 4 lines 5-6 and Examples column 6) and the compositions with the carbamate materials are employed in a fragrance application. It is also noted that the materials in the instant claims are not further limited to have a specific odor or odor level.

Applicant further argues (page 20 of 23):

That Torii and Kaiser fail to teach that materials are fragrance ingredients are fragrances.

In response, as fragrances disclosed by the claims are not required to have any specific odor or detectable odor level, the odor provided for the materials provided by the references are commensurate with the odor provided by the scope of the claims. Further, as the material is indicated to not have an unpleasant odor; this is taken as prima facie evidence that a material with no odor could not have its odor described in regard to being pleasant or unpleasant as no comparison would be expected without detection.

Applicant further argues (page 21-23 of 23):

That Torii et al. do not teach or suggest a method for manufacturing a fragrance application applicable to the genus materials of Claim 11 and 13.

In response, the materials employed would be expected to have the same or similar properties, applicable to the applications taught, comprised in fragrance material applications; these compositions are taken to include a carbamate material, not having an unpleasant odor, for a fragranced hair care or personal application.

The rejections, as previously presented in the prior Office Action of 27 April 2011, are maintained.